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OFFICE OF PETITIONS

~~In re Application of
Lesieur et al.
Filed: February 19, 2002
Application No. 10/076,669
Attorney Docket No. C-2373 Cont.
For: METHOD FOR DESULFURIZING
GASOLINE OR DIESEL FUEL FOR USE
IN A FUEL CELL POWER PLANT~~

: DECISION DISMISSING
: REQUEST FOR REFUND

~~In re Application of
Lesieur et al.
Filed: January 10, 2002
Application No. 10/042,056
Attorney Docket No. C-2373 Cont.
For: METHOD FOR DESULFURIZING
GASOLINE OR DIESEL FUEL FOR USE
IN A FUEL CELL POWER PLANT~~

This is a decision on the letter filed May 9, 2002 requesting a refund for the filing fee paid in application No. 10/076,669.

The fact that applicant has filed duplicate or substantially duplicate applications does not entitle applicant to a refund of the filing fee. The papers filed on February 19, 2002, as application No. 10/076,669, are entitled to a filing date of February 19, 2002, and the filing fee paid in application No. 10/076,669 is the fee required by law.

37 CFR 1.26(a) reads:

(a) The Commissioner may refund any fee paid by mistake or in excess of that required. A **change of purpose after the payment of a fee, such as when a party desires to withdraw a patent or trademark filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.** The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide

the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Commissioner may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. (Emphasis added.)

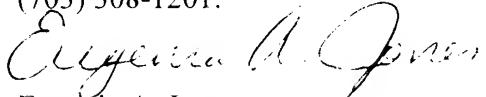
Section 607.02 of the Manual of Patent Examining Procedure, Eighth Edition (August 2001) reads, in part, as follows:

Under 35 U.S.C. 42(d) and 37 CFR 1.26, the Office may refund: (1) a fee paid by mistake (e.g., fee paid when no fee is required); or (2) any fee paid in excess of the amount of fee that is required. See *Ex parte Grady*, 59 USPQ 276, 277 (Comm'r Pat. 1943) (the statutory authorization for the refund of fees under the "by mistake" clause is applicable only to a mistake relating to the fee payment). **When an applicant or patentee takes an action "by mistake" (e.g., files an application or maintains a patent in force "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application or a maintenance fee submitted for such patent) is not a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d).** 37 CFR 1.26(a) also provides that a change of purpose after the payment of a fee, as when a party desires to withdraw the filing of a patent application for which the fee was paid, will not entitle the party to a refund of such fee. (Emphasis added and error corrected.)

Accordingly, the request for refund is dismissed.

After mailing this decision, application No. 10/076,669 will be returned to the Office of Initial Patent Examination (OIPE) for processing. Application No. 10/042,056 will be forwarded to Technology Center 1700 for examination in due course.

Telephone inquiries concerning this communication should be directed to Terry J. Dey at (703) 308-1201.



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